

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SUEZ WATER ENVIRONMENTAL SERVICES INC.

Plaintiff,

v

Hon. \*\*  
Case No.: \*\*

SOUTH HURON VALLEY UTILITY AUTHORITY

COMPLAINT  
JURY DEMANDED

Defendants.

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**COMPLAINT AND JURY DEMAND**

NOW COMES, SUEZ Water Environmental Services Inc. (“SWES”), by and through its attorneys, Cardelli Lanfear, P.C., and for its Complaint states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, SWES, is and was at all times pertinent hereto, a Delaware corporation with its principal place of business in Paramus, New Jersey and doing business in the State of Michigan.

2. Defendant, South Huron Valley Utility Authority (“Defendant” or “SHVUA”) is a Michigan municipality with its principal place of business in Rockwood, Michigan.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000.00 and this action is between citizens of different states.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

### **COMMON ALLEGATIONS**

5. SWES is a leader in environmental services, such as providing operation and maintenance services to wastewater treatment facilities around the United States.

6. On March 31, 2009, SHVUA entered into an Operation and Maintenance Agreement with a SWES’s predecessor, United Water NACO, LLC. **Exhibit A**, Operation and Maintenance Agreement (“the Agreement”).

7. On July 20, 2011, a new Operation and Maintenance Agreement was entered into between SHVUA and United Water Environmental Services Inc., which later changed its name to SWES in 2015 to reflect that of its parent company.

8. This Agreement was amended on May 28, 2014 and is the pertinent contract between the two parties.

9. In December 2017, SHVUA notified SWES that the Agreement would not be renewed.

10. SHVUA allowed SWES and other companies to submit proposals to obtain the new contract. Ultimately, a non-party, Jacobs Engineering Group, Inc., was awarded the contract with SHVUA.

11. The Agreement with SWES expired on December 31, 2018.

12. SWES submitted one (1) invoice to SHVUA on December 31, 2018, and then four (4) separate invoices on January 31, 2019, for a total of five (5) separate invoices in accordance with the Agreement (“the Invoices”). **Exhibit B**, Invoices.

13. The Invoices total \$778,888.86 and are for expenses largely related to services and goods provided by third parties to SHVUA facilities.

14. The supporting documents related to the goods and services provided by third parties are not in **Exhibit B** but are in Defendant’s possession.

15. As of April 2, 2019, SHVUA had not paid the Invoices or raised any disputes or issues regarding the Invoices.

16. On April 2, 2019, SWES sent correspondence to SHVUA regarding the Invoices and requesting payment within ten (10) days of the date of the letter. **Exhibit C**, April 2, 2019 Letter to the Authority.

17. On April 12, 2019, SHVUA responded to SWES’s April 2, 2019 letter advising that it was declining to pay the Invoices because it claimed that it had been damaged by SWES and entitled to a setoff.

**Count I – BREACH OF CONTRACT**

18. SWES incorporates the allegations in paragraphs 1 through 19 as if the same were fully set forth herein.

19. The Agreement is a valid and binding agreement between SWES and SHVUA.

20. SWES performed its obligations under the Agreement.

21. SWES submitted the Invoices to SHVUA in December 2018 and January 2019, which reflect expenses reasonably incurred in the management of SHVUA facilities prior to December 31, 2018.

22. Between December 31, 2018, and January 31, 2019, SWES submitted \$778,888.86 in invoices to SHVUA for payment.

23. The Invoices were submitted by SWES in accordance with the Agreement and pursuant to the parties' course of dealings.

24. However, unlike invoices previously submitted by SWES to SHVUA, SHVUA did not pay these invoices.

25. After more than sixty (60) days of being past due, SWES advised SHVUA that it had failed to make the proper payments of \$778,888.86.

26. SHVUA has never objected to the validity and reasonableness of the expenses reflected in the invoices.

27. By failing to pay the amounts due and owing to SWES, SHVUA is in material breach of the Agreement.

28. Per the terms of the Agreement between the parties, sums due and owing for work under the Agreement are subject to interest at the published prime rate of interest plus 2% beginning 45 days after receipt of an invoice therefor.

29. The breach of contract by SHVUA has caused SWES damages of \$778,888.86, as well as expenses, costs, attorneys' fees, and interest.

30. Accordingly, SWES is entitled to judgment for the full amount due and owing on the open account, \$778,888.86, plus interest.

WHEREFORE, SWES respectfully requests that this Court enter judgment in favor of SWES and against SHVUA in an amount exceeding \$75,000.00, together with interest, costs, and attorneys' fees, and that this Court grant such other and further relief as it deems appropriate.

### **COUNT II – OPEN ACCOUNT**

31. SWES incorporates the allegations in the previous paragraphs 1 through 29 as if the same were fully set forth herein.

32. Pursuant to the Agreement, and throughout its duration, SWES has billed SHVUA for monthly expenses incurred in the operation of SHVUA facilities.

33. SWES has maintained an open account to reflect the ongoing status of SHVUA's financial obligations to SWES.

34. As of January 31, 2019, the total sum due to SWES from SHVUA pursuant to the Agreement is \$778,888.86, excluding interest. See Affidavit of Gary Timmer, ¶¶ 9-12, **Exhibit D**.

35. SWES has made written demand upon SHVUA for the payment of the amount owed on said account. **Exhibit C**.

36. As of April 2019, SHVUA did not pay on the open account or contest the amounts owed.

37. Accordingly, SWES is entitled to judgment for the full amount due and owing on the open account, \$778,888.86, plus interest.

WHEREFORE, SUEZ Water Environmental Services Inc. respectfully requests that this Court enter judgment in its favor and against the South Huron Valley Utility Authority in an amount exceeding \$75,000.00, together with interest, costs, and attorneys' fees, and that this Court grant such other and further relief as it deems appropriate.

Respectfully submitted,

CARDELLI LANFEAR, P.C.

/s/ Thomas G. Cardelli

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Dated: July 15, 2020

**PROOF OF SERVICE**

The undersigned hereby certifies that on the 15th day of July 2020, **Plaintiff's Complaint, Jury Demand**, and this **Proof of Service** were served upon the attorneys of record of all parties to the above cause by:

<input type="checkbox"/> First-Class Mail	<input type="checkbox"/> Email	<input checked="" type="checkbox"/> Electronic Filing
<input type="checkbox"/> FedEx	<input type="checkbox"/> Hand Delivery	

I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/s/ Julie Ann Green  
Julie Ann Green, Legal Assistant